## BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA



Application of Southern California Edison Company (U 338 E) for Approval of Economic Development Rates.

Application of Pacific Gas and Electric Company (U 39 E) to Modify the Experimental Economic Development Rate (Schedule ED).

Application of SOUTHERN CALIFORNIA GAS COMPANY (U 904 G) for Approval of a Long-Term Gas Transportation Agreement with Guardian Industries Corp.

Application 04-04-008 (Filed April 5, 2004) (Rehearing Granted May 25, 2006)

Application 04-06-018 (Filed June 14, 2004) (Rehearing Granted May 25, 2006)

Application No. 05-10-010 (Filed October 7, 2005) (Discount Issues)

#### COMMENTS OF SOUTHERN CALIFORNIA GAS COMPANY (U 904 G) CONCERNING PROPOSED DECISION AND ALTERNATE PROPOSED DECISION

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#### COMMENTS OF SOUTHERN CALIFORNIA GAS COMPANY (U 904 G) CONCERNING PROPOSED DECISION AND ALTERNATE PROPOSED DECISION

Pursuant to Rule 14.3 of the Rules of Practice and Procedure of the California Public Utilities Commission (the "Commission"), Southern California Gas Company ("SoCalGas") offers these comments concerning the proposed decision ("PD") and alternate proposed decision ("APD") in the above-referenced consolidated proceeding.

As SoCalGas explains in more detail below, the conclusion in the PD and APD that the gas public purpose program surcharge ("G-PPPS") may not be "discounted" should be revised to clarify that this prohibition does not extend to *all* reductions in the G-PPPS, and to make clear that while the G-PPPS cannot be discounted on an individual customer basis, the Commission retains the discretion to establish a discounted G-PPPS rate on a customer class basis. In addition, SoCalGas requests that the Commission delete the statement included in the PD and APD that appears to endorse the argument that the most equitable manner to fund the PPP is to require all customers to contribute on

an equal-cents-per-unit basis. Finally, SoCalGas recommends that the Commission issue a clear statement regarding the scope of applicability of Public Utilities Code § 890 to non-investor-owned utilities, including municipal utilities.<sup>1/</sup>

In Phase I of A.05-10-010, the Commission considered the application filed by SoCalGas requesting approval of a long-term gas transportation agreement (the "Agreement") between SoCalGas and Guardian Industries Corp. ("Guardian"). The proposed Agreement included certain pricing discounts intended to prevent Guardian from relocating its manufacturing operation out of California and to achieve a migration from fuel oil, which had historically been used at Guardian's production facility, to cleaner-burning natural gas. While no party contested the showing made by SoCalGas that Guardian represented a business flight risk and that approval of the proposed discounted Agreement was necessary in order to keep Guardian's business within the state, the Division of Ratepayer Advocates ("DRA")<sup>2/2</sup> and the Utility Reform Network ("TURN") challenged SoCalGas' proposal to discount the G-PPPS rate offered to Guardian and proposed for similarly-situated customers. Although SoCalGas expressly noted in Phase I that the proposed discounted G-PPPS rate "would be available to all similarly-situated customers who request it,"<sup>3</sup>/ Parties opposed to SoCalGas' Application have persisted in characterizing SoCalGas' request as a request to discount the surcharge rate of an individual customer.

Indeed, the disagreement between the parties in Phase II as to the G-PPPS was largely a semantic one. SoCalGas characterized its requested "discount" as a request to set a discounted rate for a class of customers -e.g., Guardian and all similarly situated

All statutory references herein are to the Public Utilities Code unless otherwise noted.

Opening and Reply Briefs in Phase I were filed by the predecessor of the Division of Ratepayer Advocates, the Office of Ratepayer Advocates.

<sup>&</sup>lt;sup>3</sup>/ Phase I Opening Brief of SoCalGas, p. 13. *See also*, Phase I Reply Brief of SoCalGas, pp. 9, 10-11.

customers. Those parties that opposed SoCalGas' request characterize the "discount" as a request to set a discounted rate for an individual customer. As a practical matter, however, no party to this phase of the proceeding, including SoCalGas, suggested that the Commission has the authority to offer a customer-specific G-PPPS discount. Thus, the discussion in the PD and APD that appears to align parties on either side of a single issue – those arguing for a "discount" and those arguing against a "discount" is misleading. In actuality, the parties in Phase II essentially argued past each other, each seemingly agreeing on the scope of the Commission's authority to discount the G-PPPS rate, but disagreeing as to what precisely SoCalGas was requesting in its Application.

The question to be addressed in the PD and APD is not whether the parties opposed to SoCalGas' Application are correct that the Commission may not discount the G-PPPS for an individual customer – it is clear that it may not – but rather whether the Commission has the authority to establish the requested customer-class discount *for Guardian and similarly-situated customers*. The PD and the APD, however, fail to frame the issue in this way. The conclusion that "[t]he G-PPPS cannot be discounted" ignores the differing interpretations of the parties concerning the nature of the "discount" requested in SoCalGas' Application. <sup>4</sup> By addressing the ability of the Commission to "discount" the G-PPPS without clarifying what is meant by "discounting," the PD and APD oversimplify the issue and create a risk of misunderstanding.

The conclusion that the G-PPPS cannot be discounted could be broadly interpreted to mean that the Commission may not establish *any* reduction in the G-PPPS, even on a customer class basis. Accordingly, the PD and APD should be modified to make clear that the G-PPPS cannot be discounted on an individual customer basis, but that the Commission retains the discretion to establish a discounted G-PPPS rate on a

 $<sup>^{4/}</sup>$  See, PD, p. 36, Ordering Paragraph 4; APD, p. 35, Ordering Paragraph 3.

customer class basis. In addition, the discussion contained within the PD and APD should be revised to accurately reflect the fact that the parties were in general agreement as to the scope of the Commission's authority to discount the G-PPPS, but differed in opinion as to whether the Commission should establish a reduced G-PPPS class-based rate for Guardian and similarly situated customers.

In addition, SoCalGas requests that the Commission delete the statement included in the PD and APD appearing to endorse the argument that the most equitable manner to fund the PPP is to require all customers to contribute on an equal-cents-per-unit basis.

The PD and APD include identical language concluding that "[t]he Coalition *correctly points out* that the most equitable manner to fund the PPP is to have all customers contribute on an equal-cents-per-unit basis." Analysis of the appropriate methodology for allocating the G-PPPS is outside the scope of the instant proceeding and the record of the proceeding does not provide a foundation for this conclusion. Accordingly, the PD and APD should be revised to remove this unsupported statement.

Finally, SoCalGas notes the observation included in the PD and APD that the Commission's intent in pursuing legislation to establish the G-PPPS was "'to require *all end-use customers* to pay a nonbypassable gas surcharge to fund PPPs, such as energy efficiency and low-income assistance programs." The PD and APD correctly indicate that the G-PPPS provision eventually adopted by the Legislature, Public Utilities Code § 890, requires that the Commission annually establish the G-PPPS rate and further that natural gas utilities, including municipalities that do not have their own public purpose programs, collect the surcharge from end-use customers. SoCalGas perceives benefit in issuance by the Commission of a clear statement regarding the scope of applicability of §

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<sup>&</sup>lt;sup>5</sup>/ PD, p. 13; APD, p. 14 (emphasis added).

<sup>&</sup>lt;sup>6</sup>/ PD, p. 7 (citing D.97.06-108; emphasis added); APD, p. 7.

<sup>&</sup>lt;sup>2</sup>/ PD, p. 8, fn. 5; APD, p. 8, fn. 5.

890 to non-investor-owned utilities, including municipal utilities, and therefore supports the request of the Coalition (in pertinent part) that the Commission direct *all* California natural gas utilities to collect the statutorily-mandated PPP surcharge from each of their distribution customers.<sup>8</sup>

Section 890 (a) requires "public utility gas corporations" to collect the G-PPPS from their customers and to remit surcharge revenue to the State Board of Equalization ("BOE"). For purposes of § 890, the term "public utility gas corporation" covers municipal utilities providing gas service to the public for compensation using "gas plant" (*i.e.*, assets owned, controlled, operated, or managed to facilitate the delivery of natural gas for light, heat, or power), with certain limited exceptions set forth in § 898. SoCalGas believes that a statement such as that described above clarifying the obligation of all public utility gas corporations, including municipal utilities, to collect the G-PPPS except where certain conditions apply would further the Commission's stated goal of ensuring that *all* end-use natural gas customers bear the cost of funding gas public purpose programs.

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<sup>8/</sup> See, PD, p. 8; APD, p. 8.

<sup>&</sup>lt;sup>9</sup> P.U. Code §§ 890 (b) (1), 892.

The following excerpted provisions of the Public Utilities Code are relevant to the definition of "public utility gas corporation" for purposes of § 890, *et seq.*:

**<sup>§ 891 (</sup>b)** "Public utility gas corporation" means a public utility gas corporation as defined in Section 216.

 $<sup>\</sup>S$  216 (a) "Public utility" includes every . . . gas corporation . . . where the service is performed for, or the commodity is delivered to, the public or any portion thereof. (Emphasis added)

<sup>§ 222 &</sup>quot;Gas corporation" includes every corporation . . . owning, controlling, operating, or managing any *gas plant* for compensation within this state . . . (Emphasis added)

<sup>§ 221 &</sup>quot;Gas plant" includes all real estate, fixtures, and personal property, owned, controlled, operated, or managed in connection with or to facilitate the production, generation, transmission, delivery, underground storage, or furnishing of gas, natural or manufactured, except propane, for light, heat, or power.

For the reasons described herein, SoCalGas urges the Commission consider the revisions to the PD and APD recommended above and set forth in Attachment A hereto.

Respectfully submitted this 13<sup>th</sup> day of August, 2007.

/s/ Aimee M. Smith

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#### **ATTACHMENT**

### **Proposed Findings of Fact**

- 1. All nNonbypassable charges are may not be nondiscountableed on an individual customer basis.
- 2. There are no exemptions or exceptions for nonbypassable charges other than those specifically described in a statute.
  - 3. Economic discount rates must have a floor of all nonbypassable charges.
  - 4. Some benefits of retaining EDR customers accrue to shareholders.
- 5. There are no statutory restrictions to applying the EDR discount to all bill components other than nonbypassable charges.
- 6. In the Amended Proposal in D.05-09-018, the description of Floor Pricing and Marginal Costs is modified to read:

Limit the discount to ensure revenue does not fall below floor price, which consists of transmission charges, public purpose program (PPP) charges, nuclear decommissioning (ND) charges, DWR Bond charges, Competition Transition Charge (CTC), marginal costs for transmission, distribution, and, if a bundled-service customer, marginal costs for generation. Floor price to be based on customer-specific marginal costs, up to the OAT. Unit marginal costs to be established at beginning of customer contract.

7. The modification adopted in this decision regarding electric economic development rates does not result in any inequity in EDR discount amounts between direct access and bundled customers.

- 8. D.06-04-002 is modified to add the following Findings of Fact:
- 1. Public Utilities Code § 890, et seq. applies to all California public utility gas corporations, as that term is defined in § § 891(b), 216(a), 222 and 221 of the Public Utilities Code i.e., every gas corporation that owns, controls, operates and/or manages gas plant for compensation within California and that performs service and/or delivers commodity to the public or any portion thereof is required (with certain exceptions) to collect the G-PPPS. The G-PPPS cannot be discounted on an individual customer basis. The Commission does, however, have the authority under Public Utilities Code § 890, et seq. to establish a surcharge discount on a customer class basis.
- 2. SoCalGas may discount to Guardian its transportation rate, fixed charges, and fees.

### **Proposed Conclusions of Law**

- 1. All nNonbypassable charges are may not be nondiscountableed on an individual customer basis.
  - 2. It is unlawful to exclude nonbypassable charges from the price floor.
- 3. No exemptions or exceptions for EDR customers are permissible under applicable statutes and Commission decisions for PPP surcharges, DWR charges, CTC charges, and Nuclear Decommissioning charges.
- 4. Nonbypassable charges are not subject to exception upon a Commission finding that there will be no cost shifting.
  - 5. Shareholders as well as ratepayers obtain the benefits of the EDR customers.
  - 6. We strike Conclusion of Law 2 in D.05-09-018 stating:

The rate reductions and procedures requested by the

applicants and as modified herein have been justified. (Pub. Util. Code § 454(a).)

- 7. The rate reductions and procedures as modified herein have been justified.
- 8. All outstanding EDR contracts are subject to the Floor Pricing and Marginal Costs adopted by this decision and shall be modified in conformity with this decision not later than 90 days after the effective date of this decision. Any shortfall incurred by failure of the utility to comply with this decision will be charged to the shareholders.
- 9. This Commission does not have the authority to discount the G-PPPS <u>for</u> <u>individual customers</u>, but we do have the authority to create a new class of customers <u>and to provide a discounted surcharge rate for such customer class</u>. However, the record in this proceeding is devoid of evidence to create a new customer class.

## **Proposed Ordering Paragraphs**

#### **IT IS ORDERED** that:

1. The economic development rates (EDR) approved in Decision (D.) 05-09-018 are modified as follows:

The description of Floor Pricing and Marginal Costs is: Limit the discount to ensure revenue does not fall below floor price, which consists of transmission charges, public purpose program (PPP) charges, nuclear decommissioning (ND) charges, DWR Bond charges, Competition Transition Charge (CTC), marginal costs for transmission, distribution, and, if a bundled-service customer, marginal costs for generation. Floor price to be based on customer-specific marginal costs, up to the OAT. Unit marginal costs to be established at beginning of customer contract.

- 2. Southern California Edison Company and Pacific Gas and Electric shall file tariffs consistent with the EDR program adopted herein within 15 days of the effective date of this decision, and agreements as they are entered into. These tariffs shall be effective upon filing, subject to confirmation of compliance by the Energy Division.
- 3. All outstanding EDR contracts are subject to the Floor Pricing and Marginal Costs adopted by this decision. Not later than 90 days after the effective dated of this decision, SCE and PG&E shall file amended contracts showing compliance with this decision. Any shortfall incurred by failure of the utility to comply with this decision will be charged to the shareholders.
  - 4. D.06-04-002 is modified to add the following Findings of Fact:
    - 1. The G-PPPS cannot be discounted <u>for individual customers</u>. <u>The Commission does</u>, <u>however</u>, <u>have the authority to create a new class of customers and provide a surcharge rate discount for such customer class</u>.
    - 2. Southern California Gas Company may discount to Guardian its transportation rate, fixed charges, and fees.
- 5. As modified by this decision, D.05-09-018 and D.06-04-002 are approved. Application (A.) 04-04-008, A.04-06-018, and A.05-10-010 are closed.

#### **CERTIFICATE OF SERVICE**

I hereby certify that a copy of **COMMENTS OF SOUTHERN CALIFORNIA GAS COMPANY (U 904 G) CONCERNING PROPOSED DECISION AND ALTERNATE PROPOSED DECISION** has been electronically mailed to each party of record on the service list in A.04-04-08, A.04-06-018, and A.05-10-010. Any party on the service list who has not provided an electronic mail address was served by placing copies in properly addressed and sealed envelopes and depositing such envelopes in the United States Mail with first-class postage prepaid.

Copies were also sent via Federal Express to Commissioner Michael R. Peevey and the Assigned Administrative Law Judge Robert A. Barnett.

Executed this 13<sup>th</sup> day of August 2007 at San Diego, California

/s/ Jodi Ostrander\_\_\_\_\_\_
Jodi Ostrander

# CALIFORNIA PUBLIC UTILITIES COMMISSION Service Lists

Proceeding: A0404008 - EDISON - FOR APPROVA Filer: SOUTHERN CALIFORNIA EDISON COMPANY

List Name: DISCOUNT ISSUES Last changed: July 17, 2007

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# CALIFORNIA PUBLIC UTILITIES COMMISSION Service Lists

Proceeding: A0406018 - PG&E - TO MODIFY THE

Filer: PACIFIC GAS AND ELECTRIC COMPANY (U 39-E)

List Name: DISCOUNT ISSUES Last changed: July 17, 2007

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## CALIFORNIA PUBLIC UTILITIES COMMISSION Service Lists

Proceeding: A0510010 - SOCAL GAS CO. - FOR

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List Name: DISCOUNT ISSUES Last changed: July 17, 2007

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Proceeding: A0510010 - SOCAL GAS CO. - FOR

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**List Name: LIST** 

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